

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 2214 of 2018
Date of First hearing: 21.08.2019
Date of decision : 03.09.2018

Mr. Himanshu Khatri

R/o. C-128, Farmers Apartment, Sector-13,
Rohini, New Delhi-110085

Complainant

Versus

1. M/s BPTP Ltd.,
Office at: M-11, Middle Circle, Cannaught
Circus, New Delhi - 110001.

Respondent

CORAM:

N. K. Goel

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petition)
Haryana Real Estate Regulatory Authority, Gurugram
(Authorised by resolution no. HARERA,

GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July 2019)
under section 81, Real Estate (Regulation and Development) Act,
2016

APPEARANCE:

Shri Kuldeep Kolhi along with Ms. Priyanka Agarwal Advocate for the complainant
alongwith authorised
representative

Ms. Meena Hooda

Advocate for the respondent

M. Meena Hooda
3-9-19



EXPARTE ORDER

1. The present complaint relates to a flat buyer agreement dated 01.02.2013 executed between the complainant and the respondent promoter, in respect of flat measuring 1760 sq. ft. super area bearing no. T1- 1101, 11th floor, tower T1 in the project, namely, "Park Generations" situated in Sector 37 D, Gurugram, (in short, the subject flat) for a basic sale price of Rs. 64,03,681/- and other charges totalling to Rs. 77,82,582/- (as per builder ledger) and the complainant opted for construction linked payment plan. The project is registered with the Authority vide registration no. 7 of 2018 dated 03.01.2018.
2. The particulars of the complaint are as under: -

1.	Name and location of the project	"Park Generations", Sector 37D, Gurugram.
2.	DTCP license no.	83 of 2008 and additional license no. 94 of 2011.
3.	Nature of real estate project	Group housing.
4.	Flat/unit no.	T1- 1101, 11 th floor, tower T1
5.	Measuring area of the allotted flat	1760 sq. ft.
6.	RERA Registered/ unregistered	Registered vide no. 7 of 2018.

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7.	Date of completion as per RERA registration certificate.	30.4.2018 (Tower T-76, 17 & 19) and 30.1 1.2018(Tower T-14, 15 &18)
8.	Date of allotment letter	17.12.2012
9.	Date of execution of flat buyer agreement	01.02.2013
10.	Payment Plan	Construction linked payment plan
11.	Basic sale price of the allotted unit	Rs. 64,03,681/-
12.	Total consideration as per statement of accounts cum invoice	Rs. 90,60,797.34/- As per the statement of accounts cum invoice
13.	Total amount paid by the complainant till date	Rs. 77,34,989/-
14.	Due date of delivery of possession as per possession clause 3.1 of the agreement dated 01.02.2013	01.08.2016 (Note - 36 months plus 180 days' grace period from the date of execution of agreement)
15.	Date of offer of possession letter	17.10.2018
16.	Delay in handing over possession	2 years 2 months 16 days

3. As per clause 3.1 of the agreement, the respondent had agreed to handover the possession of the subject flat to the complainant within 36 months from the date of its execution with the additional grace period of 180 days after the expiry



of the said 36 months for obtaining the occupation certificate. However, according to the complainant various terms of the flat buyer's agreement were absolutely one sided, unfair, arbitrary and highly unreasonable and abuse of dominant position of the respondent.

4. It is stated that the respondent executed the buyer's agreement after 1 year and 4 months from the date of booking and extracted more than 30% of amount of total sale consideration which is illegal and arbitrary. The total cost of the flat is Rs. 77,82,582/- and out of this a sum of Rs. 77,34,989/- was paid by the complainant in time bound manner.

5. It is stated that according to offer of possession letter the complainant paid a sum of Rs. 77,34,989/- to respondent till March, 2017 and only last instalment remains to be paid as per the statement and the amount is demanded by the respondent without doing appropriate work on the said project, which is illegal and arbitrary.

6. It is stated that vide letter dated 17.10.2018 i.e. after a delay of approximately 2 years from the committed date of possession, the respondent offered the possession of the



subject flat along with the statement of accounts cum invoice and in the offer of possession letter dated 17.10.2018 super area of the flat was found to be unilaterally increased by the respondent from 1760 sq. ft. to 1813 sq. ft. without corresponding increase in the carpet area and without the consent and knowledge of the complainant which is in the violation of section 14(2)(i) of the Real Estate (Regulation and Development) Act, 2016 and accordingly the agreed cost at the time of allotment had been increased under various heads based on the said increased super area; that the complainant had been making timely payment of the instalments against the demands raised by the respondent from time to time, making a total payment of Rs. 77,34,989/- which constitutes to approximately 95% of the total sales consideration in respect of the subject flat. According to the complainant, the respondent had arbitrarily burdened the complainant under the head "cost escalation" in the sum of Rs. 6,50,377/- that too for its own default in offering the possession with the delay of approximately two years. It is submitted that since the respondent charges 18% p.a. interest in case of any delay in making payment of instalment,



the complainant is also entitled to the same rate of interest @ 18% p.a. on the deposited amount for the delay in handing over possession of the subject flat by the respondent and compensation for causing losses as provided under section 18(3) of the Act.

7. It is stated that the respondent has demanded VAT of Rs. 70,821/- which is illegal and unjustified. The complainant has stated that the respondent demanded advanced maintenance charges from 15.02.2019 to 14.02.2020 amounting to Rs. 77,016/- to be paid monthly under the Haryana Apartment Owners Act, without giving the possession and without the registration of the flat which is illegal. The complainant does not intend to withdraw from the project. Hence, this complaint.

8. The following issues have been raised to be decided by the authority: -

1. Whether the respondent has breached the provision of the Act as well as the agreement by not completing the construction of the unit in time bound manner?

2. Whether the respondent has unjustly enriched them by misusing the hard earned money the complainant for



almost 7 years without paying any interest or penalty for the delay in delivery of the said unit?

3. Whether the respondent is liable to pay interest on the amount paid to them by the complainant at the same rate 18% which they charged from the complainants in case of delayed payment by the complainant?

4. Whether the respondent is liable to pass the input credit to complainant which was the additional burden of GST imposed on the complainants due to inordinate delay in handing over of the possession.

5. Whether the respondent at the time of possession imposed escalation cost, increased super area without increasing carpet area is unjustified, unacceptable illegal and unilateral?

6. Whether flat buyer agreement clause of escalation cost, many hidden charges which will be forcedly imposed on buyer at the time of possession as tactics and practise used by builder guise of a biased, arbitrary and one sided drafting of FBA with a malicious and fraudulent intention?

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7. Whether the respondent demanded advance maintenance charges from 15.02.2019 to 14.02.2020 unjustified, unacceptable illegal and unilateral?

8. Whether the respondent demanded HVAT charges from complainants unjustified, unacceptable illegal and unilateral?

9. Whether the respondent collected the more than 95% amount from complainants but not made expenses on particular project so project is delayed?

10. Whether it is justified that the respondent has passed more than 7 years in development of project and still project is incomplete?

11. Whether the respondent- promoter has offered the possession of flat after long delay and without amenities and flat still not in habitable condition is illegal and arbitrary?

8. The reliefs sought are detailed as under: -

1. To handover the possession of the flat alongwith delay penalty and interest @ 18% p.a. on the deposited amount of Rs. 77,34,989/- from the due date of possession i.e. w.e.f. 01.08.2016 till the actual handover of possession of



the flat in habitable condition with all amenities and facilities, as specified under the agreement for sale;

2. To direct the respondent to quash the escalation cost.

3. To direct the respondent to quash the increased in super area of flat as carpet area remain same as previous.

4. To direct the respondent to quash the VAT charges and will pay by own.

5. To direct the respondent to quash the demand of advance maintenance as of now.

9. Notice of the complaint has been issued to the respondent thrice and the delivery reports have been placed in the file. Despite service of notice the respondent has preferred not to put the appearance and to file the reply to the complaint within the stipulated time. Accordingly, the Authority is left with no other option but to decide the complaint *ex parte* against the respondent.

10. Reply filed by the respondent thereafter has been taken on record subject to all just exceptions. In view of the judgement reported as AIR 1964 SC 993, the reply cannot be considered.

Arguments are heard.

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Issue wise findings of the authority: -

11. **All issues:** -As per the sufficient and unchallenged documentary evidence filed by the complainant on the record and more particularly the flat buyer's agreement (copy annexure C2), there is every reason to believe that vide the flat buyer agreement dated 01.02.2013 the respondent had agreed to handover the possession of the subject flat to the complainant within a period of 36 months with a grace period of 180 days which, in other words, means that the respondent was bound to offer the physical possession of the subject flat to the complainant on or before 01.08.2016. However, the offer of possession letter has been placed on the file which clearly proves that the offer of possession of the subject flat was offered to the complainant on 17.10.2018 which further clearly shows that the respondent has caused delay of about 2 years 2 months 16 days in offering possession of the subject flat to the complainant. Hence, in the considered finding of this authority, it is held that there was a delay of about 2 years 2 months 16 days in offering the possession of the subject flat to the complainant and this was in violation of the terms and

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conditions of the agreement for sale and also violation of section 11(4)(a) of the Act.

12. From a perusal of clause 2.1 of the agreement for sale, there is evidence on the record to show that the respondent had allotted an approximate super area of 1760 sq. ft and the areas *were tentative and were subject to change till the grant of the occupation certificate by the authority*. Therefore, by virtue of clause 2.1, the complainant had herself been made to understand and had agreed that what had been offered to her was only a tentative area which was subject to change on the grant of occupation certificate by the authority (as per the tentative layout plan of the flat as annexure B and specification as per annexure C attached with the agreement).

13. Clause 2.4 (i) of the Sale agreement inter alia provides that in case there is variation of more than + 15% in the agreed super area as contained in clause 2.1 and the purchaser is unwilling to accept the changed super area by way of refusal to pay the enhanced sales consideration or by accepting the refund for the changed super area, then the allotment be treated as terminated and the payment as received as against the total sale consideration of the flat shall be refunded with interest @



6% p.a. except for the non-refundable amount. In the present case, the variation in the super area offered by the respondent to the complainant vide offer of possession letter dated 17.10.2018 does not come to be more than 15%. In the present case, the increase is less than 5% of the tentative allotted super area which is within the reasonable limits and is also conceded on behalf of the complainant. As stated hereinabove, what had been offered to the complainant vide agreement for sale dated 01.02.2012 (prior to the coming into force of the Act) was only tentative area and not the confirmed area. It is correct that section 14(2)(i) of the Act casts upon a legal duty on the respondent- promoter not to make any additions and alterations in the sanctioned plan, layout plans and specifications in respect of the apartments without the previous consent of the allottee. However as stated hereinabove, the said provisions of section 14(2)(i) of the Act came into force with the coming into force of the Act. Above all, this is not the case of the complainant that she is not ready to accept the increased super area. Therefore, in the considered opinion of this authority, the complainant is not entitled to raise this grievance before this authority at this stage.



Therefore, it is held that the demand for additional charges due to the increase in the super area without corresponding increase in the carpet area is perfectly justified.

14. However, in the opinion of this authority the complainant is entitled to interest on delayed offer of possession. Accordingly, it is held that the complainant is entitled for delayed possession charges at the prescribed rate of interest of 10.45% per annum.

15. Delay in completion of the project is entirely attributable to the respondent. The complainant has made the payment within time. However, it is a matter of fact that the cost inflation index continues to increase with the passage of time and the complainant must not remain oblivious of this universal true fact. Hence, the complainant is held entitled to bear 50% of the amount towards cost escalation (Rs. 6,50,377/- ÷ 2 = Rs. 3,25,188/-)

16. Suffice to say that the award of payment of compensation is outside the jurisdiction of the authority and the complainant is at liberty to file an application before the adjudicating officer under section 71 of the act alongwith the enabling section.

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Findings of the authority: -

17. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. As per notification no. 1/92/2017-1TCP dated 14.12.2018 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purposes for promoter projects situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore this authority has complete territorial jurisdiction to deal with the present complaint.

Decision and directions of the authority:-

18. The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum



with effect from the committed date of delivery of possession till the date of offer of possession letter dated 17.10.2018 within a period of 90 days from this order.

19. The cost escalation charges are reduced to Rs. 3,25,188/-
20. Demand of Rs. 77,016/- towards advance maintenance charges is set aside being illegal.
21. The complaint stands disposed of accordingly.
22. The case file be consigned to the registry.

N. K. Goel

(Former Additional District and Sessions Judge)

Registrar -cum- Administrative Officer (Petition)
Haryana Real Estate Regulatory Authority, Gurugram
(Authorised by resolution no.

HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July
2019) under section 81, Real Estate (Regulation and
Development) Act, 2016.

Dated: 03.09.2019

Order ratified by the Authority as above.

(Samir Kumar)
Member

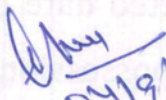
(Subhash Chander Kush)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.09.2019

1. The actual date of handing over of physical possession and the provided date of giving possession as per the BBA be mentioned specifically in the judgement.
2. Section 18(1)(b) alongwith rule 15, be also mentioned, by virtue of which the prescribed rate of interest is being awarded.


04/9/19
Member (SCK)


(Samir Kumar)

Member

Registrar-cum-Administrative Officer (Petitions)

22/9/19

As per the orders dated 04.09.2019 of the Ld. Members para 18 shall now be read as under-

The Authority exercising its power under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby directs the respondent to pay delayed possession charges at the prevalent prescribed rate of interest of 10.45% per annum with effect from the committed date of delivery of possession i.e. 01.08.2016 till the date of offer of possession letter dated 17.10.2018 as provided under proviso to Section 18(1)(b) read with Rule 15 of the Rules within a period of 90 days from this order.

N.K. Goel
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N.K. Goel

(Former Additional District and Sessions Judge)
Registrar -cum- Administrative Officer (Petition)
Haryana Real Estate Regulatory Authority, Gurugram
(Authorised by resolution no.

HARERA,GGM/Meeting/2019/Agenda 29.2/Proceedings/16th July 2019)
under section 81, Real Estate (Regulation and Development) Act, 2016.

Dated: 06.09.2019

Judgement uploaded on 10.09.2019